been able to raise any money until then. If that is the case why did he plead in paragraph 20 of the Statement of Claim that had there been a prompt reply to his letter of the 13th October, 1959 or his Solicitors' letter of the 14th November, 1959, or a definite answer to their telephone inquiry of the 20th November, 1959, informing the plaintiff or his solicitors of the decision to proceed with the sale and of the urgency of the matter the plaintiff could have arranged for the payment of the quit rent due in time? As I have already said I do not see how failure to make these prompt replies or give a definite answer can be said to point to the wrongful exercise of his discretion. If the plaintiff could have arranged for the payment of the quit rent due in time why did he not do so? This was a certain way of preventing the sale by virtue of the provisions of section 208 of the Land Code to which I have already referred.

In all the circumstances of the case I do not consider that any evidence has been adduced that the Collector of Land Revenue improperly exercised the discretion given to him by subsection (ii) of section 207. In those circumstances the sale which took place on the 23rd November, 1959, was not made contrary to the provisions of the Enactment and accordingly the plaintiff's case fails.

The plaintiff's claim is accordingly dismissed with costs.

*From this decision the plaintiff appealed to the Court of Appeal.*

COURT OF APPEAL.

**Thomson C.J.** (delivering oral judgment): The facts of this case, which have never been and are not in dispute, are to my mind sufficiently set out in the long and careful and accurate judgment of Mr. Justice Hepworth and for myself I do not propose to repeat them.

The matter arises out of a forced sale of a piece of land, in respect of which the appellant stands in the shoes of the proprietor, for arrears of quit rent and I hope it is not necessary for me to emphasise that quit rent is part of the land revenue and to a State like Pahang prompt and efficient collection of land revenue is a matter of the very greatest public interest.

In the present case it seems to be agreed that the provisions of the Land Code regarding such sales have been complied with except, it is said, in two respects.

In the first place it is said that the Collector did not act judicially, that he did not exercise his discretion in a judicial way, when he refused to grant a postponement of the sale. In the second place it is said that the sale should have been postponed under the terms of section 208 of the Land Code by reason of tender of the amount due before the time of the sale.

In my view both these points are without merit.

As regards the Collector's exercise of discretion, or rather his refusal to exercise his discretion, there was not a scrap of evidence before him as to how and why the appellant had failed to start to take steps earlier than he did to raise the necessary money to pay the quit rent. There were promises; there were statements of what the appellant would do later on; but there was nothing to show any good reason why he had not taken steps, as they say in Scotland steps were not taken timeously.

As regards the question of tender, this of course was not a commercial sale. It was a sale by a public officer acting under statutory powers and in pursuance of a statutory duty in accordance with detailed provisions laid down by the statute. These provisions as regards notice and advertisement were, so far as we have been told, complied with in the present case.

The very most that can be said about tender was that there was a tender which at the very earliest was over an hour after the advertised time for sale. In view of the statutory nature of the proceedings it seems to me that it was for the party setting up that tender to show that it was in fact made before the time of sale. It is clear from what the learned trial Judge says that if it had in fact been made before the actual time of sale it would have been a matter of great ease to prove that at the trial because the appellant was given every opportunity to call the Collector, who was in attendance, after counsel for the Government had made it clear he was not being called as a witness for the defence.

For myself in all the circumstances of the case I would dismiss the appeal with costs, the deposit in Court to be paid to the respondent.

I would also express the hope that this appellant's fate may serve as a warning to other absentee land owners in the State of Pahang.

**Hill** and **Good JJ.A.** concurred.

*Appeal dismissed.*

## PUBLIC PROSECUTOR v. LOW YONG PING

[A. Cr. J. (Ong J.) May 22, 1961]

[K.L. — Criminal Appeal No. 27 of 1961]

*Criminal Law and Procedure — Adjournment — Application for by prosecution — Witnesses attending High Court action—Whether reasonable cause—Criminal Procedure Code (Cap. 6), s.259.*

*Road Traffic — "Dangerous driving" — Definition of — Brake-marks — Evidence of.*

The absence of prosecution witnesses due to their having to attend a High Court case as witnesses is a reasonable cause for an application for adjournment of proceedings particularly when there has been no repeated postponements or adjournments previously obtained on frivolous grounds by the prosecution disentitling it to any further indulgence.

**Obiter:** It is impossible to define "dangerous driving," and the legislature has quite rightly not attempted to do so. Driving can become dangerous in an infinite variety of circumstances, one of which is leaving one's own proper side of the road and getting into the path

of an oncoming vehicle. Such an act has potentially fatal consequences in the vast majority of cases, and there can be no two views about it being "dangerous."

CRIMINAL APPEAL.

*B. T. H. Lee* (Deputy Public Prosecutor) for the appellant.

Respondent in person.

*Cur. Adv. Vult.*

**Ong J.:** This is an appeal by the Public Prosecutor against an order of the Magistrate at Kajang acquitting the respondent of a charge, under section 35(1) of the Road Traffic Ordinance, 1958, of dangerous driving of motor-lorry No. BD-5751 at the 11¾ mile Kajang Road.

The learned Magistrate's undue haste to be done with the case is clearly the reason for his falling into error. This is obvious from the record, where, after the evidence of three prosecution witnesses had been taken, the following notes were made by the Magistrate:

"At this stage of the proceedings the Prosecution informs the Court that it cannot go on with the case any further as the Investigation Officer and the Police Photographer are not available. They had gone to the High Court for a case. The other witnesses also not available although subpoenas have been issued for their attendance. Prosecution applies for an adjournment to another date.

I refused application for an adjournment of the hearing to another date, and acquitted and discharged the defendant."

In his grounds of judgment, completed nearly a month after this order of acquittal, the learned Magistrate himself referred to the provisions of section 259 of the Criminal Procedure Code that an adjournment must be for reasonable cause, but stated that in his view the application by the prosecution for adjournment did not appear to be reasonable at all. He vouchsafed no reasons, however, for holding that view, and I think it would have been impossible for him to have attempted to do so against what appears on the face of the record. The absence of prosecution witnesses "because they had gone to the High Court for a case" is undoubtedly reasonable cause for an application for adjournment, because there can be no suggestion that attending the High Court as a witness is even remotely likely to be considered a frivolous ground. Nor had there been any repeated postponements or adjournments previously obtained on frivolous flimsy grounds by the prosecution disentitling it to any further indulgence. I would therefore allow this appeal, set aside the order of acquittal and direct that the Magistrate continue with the trial and hear the further witnesses tendered by the prosecution.

I should have had no further observations to make but for the fact that the learned Magistrate had gone further in his grounds of judgment to justify the acquittal.

He started off in the forefront of his grounds of judgment by stating:

"At the close of this case for the prosecution I found that on the evidence adduced, no *prima facie* case had been made out on the charge, (which) if unrebutted would have warranted a conviction."

He proceeded thereupon to state his reasons, having regard to the evidence then before him.

Here, again, as the learned Deputy Public Prosecutor pointed out, the Magistrate was in error because the prosecution had not yet closed its case, and the provisions of section 173(f) of the Criminal Procedure Code cannot come into operation unless and until all the evidence for the prosecution shall have been taken.

It is very unfortunate that, by attempting to bring the acquittal within section 173(f), the learned Magistrate had gone on to make two findings of fact. First, relying on the evidence of the lorry cleaner, P.W.2, he held that "the defendant had duly fulfilled the duty to take care cast upon him by the Ordinance." Secondly, he also held that, because P.W.3 "admitted he was driving at 40 m.p.h. and negotiating a bend at that speed", P.W.3 was therefore "careless of the obligation imposed upon him in respect of other road-users to take care," and that "it was the contributory negligence of P.W.3 in driving his car without due care and attention that caused the accident." These findings are entirely premature and cannot stand. Contributory negligence by P.W.3 is completely irrelevant.

In view of the order made on this appeal, I shall say nothing further than that it is far from the truth that the prosecution was seeking to establish an offence under section 35(1) by proving the mere fact of an accident on the public highway. The prosecution in fact had already done much more. It had clearly established that the accident could never have happened but for the defendant's lorry being placed in the position as P.W.1 saw it and showed in his sketch plan, Ex. P1 & P1(K). The brake-marks speak louder than words of the speed at which the defendant was driving. A reference to page 43 of *Bingham's Motor Claims Cases* (3rd Ed.) will be found illuminating. How far can the driver of motor-lorry BD-5751 seated in his cab at that eye-level, see the road ahead of him, if he was keeping a proper look-out? These and many other relevant factors must be taken into account.

I will conclude by saying that it is impossible to define "dangerous driving," and the legislature has quite rightly not attempted to do so. Driving can become dangerous in an infinite variety of circumstances, one of which is leaving one's own proper side of the road and getting into the path of an oncoming vehicle. Such an act has potentially fatal consequences in the vast majority of cases, and there can be no two views about it being "dangerous".

*Appeal allowed.*